

REMARKS

Claims 1-23 were present in the application and stand subject to a restriction requirement. Claim 1 has been amended to more particularly point out and distinctly claim the subject matter that applicants regard as their invention. New Claim 24 has also been added. Support for this claim is found in original Claim 1 and elsewhere in the application as filed.

Response to Restriction Requirement

The Examiner has required that the applicants elect a single invention selected from SEQ ID NO:3 and SEQ ID NO:2. In addition, the Examiner has required that applicants elect a single invention from the following groups:

Group I, claim(s) 1-4, 7-8, 11, 14, 17, and 23, drawn to a nucleic acid molecule comprising a pollen-specific promoter operably linked to any coding sequence, vector, and plants transformed therewith, and a method of its use to produce said plants, for example.

Group II, claim(s) 5-6, 9-10, 12-13, and 15-16, drawn to a nucleic acid molecule comprising a pollen-specific promoter linked to a sequence which down regulates expression of a pollen antigen, and plants transformed therewith, for example.

Group III, claims 18-22, drawn to a method of producing male sterile plants via a plant transformation method with a pollen-specific promoter linked to a sequence conferring male sterility, and the resultant plants, for example.

It is respectfully submitted that the Examiner has misunderstood applicants' invention and that the Examiner's restriction requirement should properly be withdrawn.

As described in the specification at page 13, lines 15-20, and in the sequence listing, Figure 1 shows the sequence of the genomic clone (SEQ ID NO:1) that contains the putative promoter (SEQ ID NO:2; 2789 bp) and the shorter promoter sequence of SEQ ID NO:3 (953 bp). SEQ ID NO:2 (the whole sequence upstream from the ATG start codon) includes within it the shorter promoter sequence of SEQ ID NO:3 (nucleotides 1837 to 2789 of SEQ ID NO:2).

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

correspond to nucleotides 1 to 953 of SEQ ID NO:3). Accordingly, SEQ ID NO:2 and SEQ ID NO:3 possess the same technical feature, i.e., SEQ ID NO:3.

In addition to the foregoing, the Examiner appears to have attempted to distinguish the claims of Groups I and II on the basis that the Group I claims are directed to a pollen-specific promoter operably linked to any coding sequence, whereas the claims of Group II are directed to a pollen-specific promoter linked to a sequence which down regulates expression of a pollen allergen. However, the Examiner's attention is directed to Claim 1 (a Group I claim), which requires that the molecule, "... is capable of modifying pollen-specific expression", and the claims of the Examiner's Group II merely further require that the operably-linked second nucleic acid molecule (Claim 2) is capable of down-regulating expression of a pollen allergen (Claim 5). Thus, the claims of the Examiner's Group II merely define a subset of embodiments defined by the claims of the Examiner's Group I, and any searching with respect to the subject matter of either Groups I or II would be equally applicable to the claims of the other group. For this reason, there should be no burden whatsoever on the Examiner in searching and examining the claims of both Groups I and II together as a single group, and it is believed the Examiner should properly withdraw the restriction requirement at least with respect to Groups I and II and to limiting the scope of claims in the application to either SEQ ID NO:2 or SEQ ID NO:3.

Although it is believed that the Examiner's restriction requirement is clearly inappropriate, and in order to comply with the requirements for response to a restriction requirement, applicants hereby elect the claims of the Examiner's Group I, Claims 1-4, 7-8, 11, 14, 17, and 23, and the sequence of SEQ ID NO:3 for prosecution in the present application. It is again noted, however, that SEQ ID NO:3 is encompassed by SEQ ID NO:2, and the claims of the elected Group I encompass the subject matter of the claims of the nonelected Group II. In

addition, new Claim 24 is believed to be properly included within the scope of the claims of the elected Group I.

Conclusion

Entry of the foregoing amendments and election, and reconsideration and withdrawal of the restriction requirement is requested. The Examiner is further requested to contact applicants' representative at the phone number set forth below to discuss any issues that may facilitate prosecution of this application.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

A handwritten signature in black ink, appearing to read "Dennis K. Shelton", is written over the printed name.

Dennis K. Shelton
Registration No. 26,997
Direct Dial No. 206.695.1718

DKS:cj

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100